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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. [redacted]92

SERVICE STORAGE AND TRANSFER CO., INC., *Petitioner*

v.

COMMONWEALTH OF VIRGINIA, *Respondent*

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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OCTOBER TERM, 1957

No. 1058

SERVICE STORAGE AND TRANSFER CO., INC., *Petitioner*

v.

COMMONWEALTH OF VIRGINIA, *Respondent*

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

RESPONDENT'S CONTENTION

The Commonwealth of Virginia contends that the decision of the Supreme Court of Appeals of Virginia rested on a non-federal ground and that consequently this Court should not assume jurisdiction. The alleged non-federal ground is not spelled out but a single proposition may be inferred from respondent's general argument which may be stated as follows:

That the Interstate Commerce Commission's interpretation of petitioner's interstate certificate of public convenience and necessity as expressed in *Service Storage and Transfer, Co., Inc.—Petition For Declaratory Order* 71 MCC 304 rests only on the assumption that petitioner's operations between points in Virginia over routes through West Virginia were

"bona fide." Respondent infers from that finding that a state agency is entitled independently to determine as a *matter of fact* whether an interstate motor carrier's operations are "bona fide" and then to conclude whether as a *matter of law* said operations are interstate.

ARGUMENT IN REPLY

1. Whether the Issue Before the Supreme Court of Appeals of Virginia and the Virginia State Corporation Commission Was One of Fact, Law or a Mixed Question of Law and Fact It Was Necessarily a "Federal Question."

A clear-eyed analysis of the Interstate Commerce Commission's decision in *Service Storage and Transfer Co., Inc.—Petition for Declaratory Order,* supra, reveals that the interpretation there given to petitioner's certificate constituted resolution of a pure question of law. This is demonstrated by the fact that in construing the certificate the Commission simply applied the rule of decision which it and the Federal Courts have followed for many years.

In *Transport Corporation of Virginia-Extension-Maryland* 43 MCC 716, 719 the Commission disposed of a question identical to that presented in the declaratory order proceeding as a pure question of law. The language employed merits direct quotation:

> "It is well settled that regular-route motor common carriers may operate over all combinations of their separately described routes and between all authorized points thereon, unless their service is specifically restricted in some particular. POWELL BROS. TRUCK LINES, INC. — PURCHASE — BRYAN, SUPRA. The same principle has been applied to regular-route common-carrier operations acquired by purchase, merger, or in proceedings under sec-

tion 207(a) of the act. DAYS, TRANSFER, INC.—PURCHASE—HANER, 39 M.C.C. 339; DIXIE FREIGHT LINES, INC., COMMON CARRIER APPLICATION, 24 M.C.C. 780. And, it has been held generally in motor-carrier proceedings under sections 5 and 212(b) of the act that where common-carrier regular-route and irregular-route authorities, or two or more common-carrier, irregular-route authorities are unified for operation by one carrier, through service may be provided between authorized points in both of such authorities, unless the public interest requires the imposition of a restrictive condition against the rendition of through service in whole or in part. The only requirement in these instances has been that there must be a point of service common to both operating authorities and the physical operation must be rendered through such common point. CAROLINA FREIGHT CARRIERS CORP.—PURCHASE—EDMUNDS, 36 M.C.C. 259, B & E. TRANSP. CO., INC.—PURCHASE—MERCHANTS TRANSP., INC. 36 M.C.C. 561; and CONSOLIDATED FREIGHTWAYS, INC. — PURCHASE — PACIFIC I. EXP., 38 M.C.C. 577."

The conclusions reached by the Interstate Commerce Commission in *Transport Corporation of Virginia* have been followed in *Aetna Freight Lines, Inc., Interpretation of Certificate* 48 MCC 610 they have also been followed by the Federal courts. See, *Century-Matthews Motor Freight* v. *Thrun,* 173 F. 2d 454 and *Interstate Common Carrier Council* v. *U. S.,* 84 F. Supp. 414, 420.

Although as stated above it is believed that the construction to be placed on petitioner's certificate presents a question of law only, it matters not, insofar as the issue concerning this Court's jurisdiction is concerned, whether the interpretation of a certificate

issued by the Interstate Commerce Commission is one of law, fact, or a mixed question of law and fact. This is so because an Interstate certificate, springing as it does from order of a Federal agency, and resting ultimately on a Federal statute and the Federal Constitution, must of necessity be interpreted finally by Federal authorities.

Even assuming, as respondent argues, that the character of petitioner's operation is to be determined by factual tests alone, and that such operations must be in "good faith" over "normal or usual routes" in order to be classed as interstate transportation under its interstate certificate, those tests can be applied only by the Interstate Commerce Commission and on review by Federal Courts. To conclude otherwise would permit state governments to resolve Federal issues with finality and frustrate the supremacy clause contained in Article VI of the Federal Constitution. The evils attending such results were delineated by this Court a century and a half ago in *Martin* v. *Hunter's Lessee,* 1 Wheaton 304, 4L. ed 97.

With respect to the precise issue now presented, i.e., the jurisdiction of this court, reference to *Missouri Pacific Railroad Company* v. *Stroud,* 267 U.S. 404, 69 L. ed. 683 is sufficient to demonstrate that only Federal forums may ultimately determine whether given transportation operations are in fact and law "interstate."

2. The "Federal Question" Was Timely and Properly Raised and Disposition Thereof Was an Essential Ingredient of the Decision of the Supreme Court of Appeals of Virginia.

Respondent does not contend that the federal question was not timely or properly raised. It argues in effect, however, that resolution of the federal question was not necessary to the decision of the Virginia Supreme Court of Appeals. It is difficult to perceive the validity of that argument, for if the questioned operations of petitioner were in violation of state law they were so only because said operations were not interstate and not authorized by its interstate certificate. Therefore, as a matter of logical priority is was necessary for both the State Corporation Commission and the Supreme Court of Appeals of Virginia first to determine whether petitioner's interstate certificate authorized the operations. As has been shown above interpretation of petitioner's certificate presents a federal question.

That both the State Corporation Commission and the Virginia Supreme Court of Appeals recognized the necessity to decide, and did decide the federal question is made manifest by their respective statements of the essential issue. The State Corporation Commission said:

> "The interesting question is whether the interstate character of the movement turns on whether it *is* an interstate movement or whether the I.C.C. *says* it is an interstate movement." (Petition, Page 16a)

The Supreme Court of Virginia said:

> "The question for decision is whether the instant shipments involved intrastate or interstate commerce." (Petition, page 9a)

CONCLUSION

Neither the opinion of the Supreme Court of Appeals of Virginia nor that of the State Corporation Commission clearly state or even suggest that their decisions or either of them rested on non-Federal grounds. Much to the contrary both opinions make it abundantly clear that the federal issue was presented and consideration thereof was necessary to decision.

Respondent's present contention that the State Court's action rested on independent and adequate state grounds is manifestly unsound. Accordingly, petitioner prays that this court grant certiorari and entertain the cause on the merits.

Respectfully submitted,

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